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Committee on the Peaceful Uses of Outer Space

Questions on suborbital flights for scientific missions and/or for human transportation

Note by the Secretariat

Addendum

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II. Replies received from Member States

Mexico

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Question (a). Is there a relationship between suborbital flights for scientific missions and/or for human transportation and the definition and delimitation of outer space?

Yes. To date, both have used the airspace through which aircraft pass in order to reach so-called outer space. In the absence of a boundary, conceptually it is all "space", with no distinction made between airspace and outer space. The boundary within which airspace may be used is based on regulations issued by the International Civil Aviation Organization (ICAO), which establish a boundary of between 18 and 19 kilometres for flights of passengers, cargo, etc.

Question (b). Will the legal definition of suborbital flights for scientific missions and/or for human transportation be practically useful for States and other actors with regard to space activities?

Yes. Among other considerations, it will be important to clarify whether the flight in question is that of an aircraft or of a space object, as defined in the treaties governing outer space, the Moon and other celestial bodies.

It will be important to define the applicable legislation with respect to liability: the Convention for the Unification of Certain Rules Relating to International Carriage by Air, the Convention for the Unification of Certain Rules for International Carriage by Air or the Convention on International Liability for Damage Caused by Space Objects.

In view of the above, in the case of suborbital flights for passengers, it might be possible to delimit the scope of such a definition through a specific regulation, which does not currently exist, setting out, inter alia, the rights and obligations of those passengers, similar to the regulations applicable to air transport (flights carrying passengers and/or cargo, flights for the purpose of scientific experiments, etc.).

With regard to space object launch platforms that are comparable, when fairly assessed, to an airfield or airport, no regulations equivalent to a treaty are in force. Such platforms operate on the basis of national legislation.

It would be extremely useful for States to define suborbital flights but, rather than simply a definition, comprehensive regulation is needed.

Question (c). How could suborbital flights for scientific missions and/or for human transportation be defined?

As space (outer space) flights that do not involve scientific activities or the transportation of passengers in the "airspace" in which aircraft subject to the provisions of ICAO instruments and national regulations fly.

It should be noted that, although no boundary has been established between airspace and outer space, such flights, both on their journey to outer space and on their return to the Earth, use the so-called airspace.

Question (d). Which legislation applies or could be applied to suborbital flights for scientific missions and/or for human transportation?

This question is imprecise, because it does not specify concrete acts or circumstances, for example, liability in case of collision with an aeroplane. This simple question has many facets.

Question (e). How will the legal definition of suborbital flights for scientific missions and/or for human transportation impact the progressive development of space law?

Given the difficulty of negotiating and concluding a treaty (a binding instrument), regulation would be based on guidelines, resolutions or other instruments which, by

nature, are not binding. That would not be sufficient to address issues relating to security and liability. It would be necessary to work on a formal regulation that did not become bogged down in definitions.

Question (f). Please propose other questions to be considered in the framework of the legal definition of suborbital flights for scientific missions and/or for human transportation.

As pointed out above, a legal definition of suborbital flights alone is insufficient. A suborbital flight passes beyond the atmosphere and can reach just over 100 kilometres above the Earth. That is nothing new; there have been rockets for scientific experiments that pass beyond the atmosphere and then return to Earth. Other flights have taken place under various conditions and using diverse methods; some use an aircraft that takes off from an airport facility.

Consideration should be given to the question of how control measures could be established by States. Furthermore, the opinion of ICAO could be taken into account as part of the analysis conducted.

The issue is currently under discussion and the adoption of a decision with respect to delimitation requires the consensus of member States.